

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL NO. 04-577
v.	:	DATE FILED: _____
NEIL H. STEIN	:	VIOLATIONS:
ANDREW P. GOLDNER	:	26 U.S.C. §7206(1) (filing false tax return - 3 counts)
		26 U.S.C. § 7206(2) (assisting preparation of false tax returns - 2 counts)
		Notice of additional factors

SUPERSEDING INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

At all times material to this indictment:

Background

1. Defendant NEIL H. STEIN was an owner and operator of five upscale restaurants in Philadelphia: (a) Striped Bass, located at 1500 Walnut Street, Philadelphia; (b) Rouge, located at 205 S. 18th Street, Philadelphia; (c) Bleu, located at 227 S. 18th Street, Philadelphia; (d) Avenue B, located at 260 S. Broad Street, Philadelphia; and (e) Fish Market, located at 122 S. 18th Street, Philadelphia (the “Stein restaurants”).
2. For operating the Stein restaurants, defendant NEIL H. STEIN received an annual salary of \$104,000 in 1999, 2000, and 2001, in the form of regular paychecks, as reflected on his IRS Forms W-2.
3. All of the Stein restaurants other than Fish Market operated as

corporations under Subchapter S of the Internal Revenue Code. Therefore, any income and losses flowed through to the shareholders, including defendant NEIL H. STEIN, who were obligated to pay any taxes that were due. Fish Market, which operated as a corporation under Subchapter C of the Internal Revenue Code, was responsible for paying its own income taxes.

4. Andrew P. Goldner, charged in Counts Four and Five, was a Certified Public Accountant and a partner with the accounting firm of Goldner, Papandon and Pappas, LLC, located at 1700 Sansom Street, Philadelphia.

5. In or about 1999, defendant NEIL H. STEIN hired Andrew P. Goldner to provide accounting services to defendant STEIN and to the Stein restaurants, including but not limited to the preparation of personal and corporate tax returns.

Cash Skim From the Stein Restaurants

6. From at least in or about October 1998 through in or about 2001, defendant NEIL H. STEIN substantially supplemented his income by skimming cash from the Stein restaurants on a daily basis, and by paying personal expenses as if those expenses were business expenses of the Stein restaurants, thereby financing a lavish lifestyle that included expensive clothing, a \$4,000 per month apartment, and lengthy annual vacations to the island of St. Bartholomew in the French West Indies.

7. In addition, defendant NEIL H. STEIN:

a. directed his subordinates to collect approximately \$300 in cash each day from each of the Stein restaurants, pay this money to defendant STEIN, and subtract the amount of cash paid to defendant STEIN from the restaurants' sales records, and in some instances caused his subordinates to record the amount of cash paid to defendant STEIN as

“loans.” Defendant STEIN skimmed over \$200,000 in cash from the Stein restaurants in this manner.

b. routinely used a corporate American Express credit card to pay for substantial personal expenses. Defendant STEIN directed his subordinates to record these and other personal expenses as business expenses, which totaled at least approximately \$200,000, and to pay them with business funds.

c. failed to pay to the Commonwealth of Pennsylvania approximately \$350,000 in state sales taxes, thereby making available more cash that could be skimmed.

Failure to Report Additional Cash Income

8. From at least in or about October 1998 to in or about October 2002, defendant NEIL H. STEIN engaged in a continuous pattern of violating the federal and state tax laws by underreporting his income and failing to pay various required federal and state taxes.

9. In or about October 2000, November 2001, and October 2002, defendant NEIL H. STEIN signed and later filed federal income tax returns for the tax years 1999, 2000, and 2001, that had been prepared by or at the direction of Andrew P. Goldner based on false and fraudulent business records provided to Goldner and/or his subordinates, by defendant STEIN and/or his subordinates, causing tax losses of at least approximately \$120,000.

False Return for Tax Year 1999

10. On or about October 14, 2000, in the Eastern District of Pennsylvania, defendant

NEIL H. STEIN

willfully made and subscribed a United States income tax return, Form 1040, for the calendar

year 1999, which was verified by a written declaration that it was made under the penalty of perjury and filed with the Internal Revenue Service, which defendant NEIL H. STEIN did not believe to be true and correct as to every material matter, in that the return underreported his total income when, in fact, as defendant STEIN well knew, his total income was substantially more than what he reported because he had received at least approximately \$100,000 in cash and other payments from the Stein restaurants which he did not report.

In violation of Title 26, United States Code, Section 7206(1).

COUNT TWO

False Return for Tax Year 2000

THE GRAND JURY FURTHER CHARGES THAT:

At all times material to this indictment:

1. Paragraphs 1 through 9 of Count One are incorporated here.
2. On or about November 30, 2001, in the Eastern District of Pennsylvania,

defendant

NEIL H. STEIN

willfully made and subscribed a United States income tax return, Form 1040, for the calendar year 2000, which was verified by a written declaration that it was made under the penalty of perjury and filed with the Internal Revenue Service, which defendant NEIL H. STEIN did not believe to be true and correct as to every material matter, in that the return underreported his total income when, in fact, as defendant STEIN well knew, his total income was substantially more than what he reported because he had received at least approximately \$100,000 in cash and other payments from the Stein restaurants which he did not report.

In violation of Title 26, United States Code, Section 7206(1).

COUNT THREE

False Return for Tax Year 2001

THE GRAND JURY FURTHER CHARGES THAT:

At all times material to this indictment:

1. Paragraphs 1 through 9 of Count One are incorporated here.
2. On or about October 14, 2002, in the Eastern District of Pennsylvania,

defendant

NEIL H. STEIN

willfully made and subscribed a United States income tax return, Form 1040, for the calendar year 2001, which was verified by a written declaration that it was made under the penalty of perjury and filed with the Internal Revenue Service, which defendant NEIL H. STEIN did not believe to be true and correct as to every material matter, in that the return underreported his total income when, in fact, as defendant STEIN well knew, his total income was substantially more than what he reported because he had received at least approximately \$250,000 in cash and other payments from the Stein restaurants which he did not report.

In violation of Title 26, United States Code, Section 7206(1).

COUNT FOUR

Assisting Preparation of False Return for Tax Year 2000

THE GRAND JURY FURTHER CHARGES THAT:

At all times material to this indictment:

1. Paragraphs 1 through 9 of Count One are incorporated here.
2. In or about 2001, in the Eastern District of Pennsylvania, defendant

ANDREW P. GOLDNER

willfully aided and assisted in the preparation and presentation of a materially false and fraudulent tax return, namely the United States income tax return, Form 1040, for defendant NEIL H. STEIN, for the calendar year 2000, knowing that the tax return was materially false or fraudulent, in that defendant GOLDNER knew that defendant STEIN had skimmed cash from the Stein restaurants and that the skimmed cash income was not reported on the tax return.

In violation of Title 26, United States Code, Section 7206(2).

COUNT FIVE

Assisting Preparation of False Return for Tax Year 2001

THE GRAND JURY FURTHER CHARGES THAT:

At all times material to this indictment:

1. Paragraphs 1 through 9 of Count One are incorporated here.
2. In or about 2002, in the Eastern District of Pennsylvania, defendant

ANDREW P. GOLDNER

willfully aided and assisted in the preparation and presentation of a materially false and fraudulent tax return, namely the United States income tax return, Form 1040, for defendant NEIL H. STEIN, for the calendar year 2001, knowing that the tax return was materially false or fraudulent, in that defendant GOLDNER knew that defendant STEIN had skimmed cash from the Stein restaurants and that the skimmed cash income was not reported on the tax return.

In violation of Title 26, United States Code, Section 7206(2).

NOTICE OF ADDITIONAL FACTORS

THE GRAND JURY FURTHER CHARGES THAT:

1. In committing the offenses charged in Counts One, Two, and Three of this indictment, defendant **NEIL H. STEIN**:

(a) Committed an offense and relevant conduct in which the tax loss exceeded \$80,000, as described in U.S.S.G. §§ 2T1.1, 2T4.1;

(b) Committed an offense in which the defendant was an organizer, leader, manager, or supervisor of criminal activity as described in U.S.S.G. § 3B1.1.

2. In committing the offenses charged in Counts Four and Five of this indictment, defendant **ANDREW P. GOLDNER**:

(a) Committed an offense and relevant conduct in which the tax loss exceeded \$30,000, as described in U.S.S.G. §§ 2T1.1, 2T4.1;

(b) Was in the business of preparing and assisting in the preparation of tax returns, as described in U.S.S.G. § 2T1.4(b)(1).

A TRUE BILL:

GRAND JURY FOREPERSON

PATRICK L. MEEHAN
UNITED STATES ATTORNEY